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NO. 89-313
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

RICHARD WOODS,

Petitioner,

vs.

STATE OF ILLINOIS,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST DISTRICT**

**BRIEF FOR RESPONDENT IN OPPOSITION**

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## QUESTION PRESENTED FOR REVIEW

Whether the Illinois Appellate Court properly found that petitioner's defense of entrapment was disproved beyond a reasonable doubt where the court applied relevant case law in determining that defendant was not entrapped and such a factual determination does not require review by this Court.

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**ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST DISTRICT**

## OPINION BELOW

The unpublished decision of the Illinois Appellate Court was rendered on February 14, 1989. The Illinois Supreme Court denied petitioner's request for leave to appeal on June 1, 1989.

## JURISDICTION

The juridictional requisites have been set forth in the Petition for a Writ of Certiorari. However, petitioner has raised only factual questions concerning the defense of entrapment and has failed to show why this Court should exercise jurisdiction and review the judgment in question by Writ of Certiorari.

## STATEMENT OF THE CASE

Petitioner, Richard Woods, was charged by Information No. 83-10532 with delivery and possession of a controlled substance. He was found guilty of delivery of a controlled substance and was sentenced to six years in the Illinois Department of Corrections. The conviction and sentence were affirmed by the Illinois Appellate Court, People v. Woods, No. 87-0271, and the Illinois Supreme Court denied petitioner's request for leave to appeal.

At trial, Officer Phillip Pariso, an undercover officer for the Chicago Police Department, testified that he was contacted by a man named Jay Perch and that the two discussed a possible cocaine purchase by Officer Pariso. Perch told the officer that he could get cocaine through his cousin,

petitioner, who could handle "anything he wanted", and gave the officer petitioner's name and telephone number.

During the week and one-half prior to petitioner's arrest, Officer Pariso contacted petitioner approximately 4 times pertaining to a cocaine purchase. The men discussed a possible deal which involved the purchase of a "kilo" of cocaine. Petitioner explained that the officer would have to travel to Florida to pick up the "kilo" from petitioner's connection in that state, however, Officer Pariso declined petitioner's invitation.

On the day of petitioner's arrest, Officer Pariso telephoned petitioner who told the officer that he was able to get him six ounces of cocaine for $13,000.00. The two men met at a restaurant where petitioner told the officer that his supplier wanted $5,000

up front. The officer refused and the petitioner left, only to return approximately one hour later.

Upon petitioner's return, petitioner told Officer Pariso to drive to the location where the supplier was to bring cocaine. After waiting for awhile with no sign of the supplier, petitioner directed the officer to drive to petitioner's home.

Upon their arrival, petitioner made a phone call to an alternative connection who would supply the cocaine if the first supplier did not come through. Following the phone call, the officer returned with petitioner to the original location where the first supplier was to deliver the cocaine, but then returned to petitioner's home after the cocaine was never delivered.

On the return drive to petitioner's home, the two men stopped at a restaurant

where petitioner made yet another phone call, and then drove back to petitioner's house to await the arrival of cocaine from the alternative connection.

As Officer Pariso and petitioner waited, a car pulled up behind the officer's vehicle and a man named Lawrence Heffner exited the car, carrying a brown bag. After petitioner and Heffner went into a building for a few minutes, they went back to Officer Pariso's car and told him to drive.

During the drive, Heffner showed Officer Pariso the bag which contained four ounces of cocaine for a purchase price of $8,500. Officer Pariso parked the vehicle and told petitioner to take $8,500 from the $13,000 pre-recorded funds while the officer got out of the vehicle and walked to the rear. At that point, the officer gave a signal and the two men were immediately placed under arrest.

Following petitioner's arrest, his house was searched and various drug paraphernelia was recovered, including various sized scales, a grinder, a bottle of isotol and various water pipes. During the search, petitioner stated that he was only involved in the drug transaction for the money and that he needed the $250.00 he was to receive to pay his rent.

After his arrest, Heffner told one of the arresting officers that petitioner had told him that he had a customer who had a lot of money and wanted to buy cocaine. Heffner was expecting to earn $800.00 from the transaction with Officer Pariso.

Petitioner testified that he spoke with Jay Perch on various occasions pertaining to the sale of cocaine and that he allegedly refused Perch's request to deal in cocaine. He also claimed that Perch

introduced him to a woman named Debbie Gardner, who, together with Perch, encouraged petitioner to begin dealing in cocaine.

Petitioner further claimed that after Perch had introduced him to Officer Pariso, and petitioner had agreed to sell cocaine to the officer, Debbie Gardner threatened petitioner for not obtaining the cocaine fast enough. Additionally, petitioner alleged that while he was looking for cocaine for Officer Pariso, the officer called him fifty to sixty times. Petitioner admitted that he did not want the officer to deal directly with his "cocaine connection" because he wanted to make some money himself in order to pay his rent. Petitioner also admitted that he called one of his connections thirty to forty times in less than a month in order to arrange the sale.

Lawrence Heffner, petitioner's co-

defendant at trial, testified that petitioner asked him if he wanted to become involved in a cocaine transaction. Petitioner continued calling Heffner and Heffner agreed to make some phone calls to purchase cocaine. However, Heffner only became involved in the deal because of the many conversations he had with petitioner.

Officer Pariso testified in rebuttal that Debbie Gardner was a police informant but that she did not introduce him to the petitioner, nor did she have anything to do with petitioner's case.

Following closing arguments, the court held that the defense of entrapment did not lie and found defendant guilty of delivery of a controlled substance. Defendant was then sentenced to six years in the Illinois Department of Corrections.

## REASON FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

THE ILLINOIS APPELLATE COURT PROPERLY FOUND THAT PETITIONER'S DEFENSE OF ENTRAPMENT WAS DISPROVED BEYOND A REASONABLE DOUBT WHERE THE COURT APPLIED RELEVANT CASE LAW IN DETERMINING THAT DEFENDANT WAS NOT ENTRAPPED AND SUCH A FACTUAL DETERMINATION DOES NOT REQUIRE REVIEW BY THIS COURT.

## REASON FOR DENYING THE WRIT

Petitioner requests this Court to issue a Writ of Certiorari to review an order by the Illinois Appellate Court which affirmed petitioner's conviction for delivery of a controlled substance. In holding that petitioner was properly found guilty beyond a reasonable doubt, the Illinois Appellate Court reviewed the record, and, after

applying relevant case law, determined that petitioner was not successful in claiming a defense of entrapment. Because petitioner merely seeks to reiterate the facts and circumstances which the Illinois Appellate Court found unpersuasive, there is no issue present which requires a decision by this Honorable Court. Therefore, the State of Illinois requests that the petition for a writ of certiorari be denied.

Petitioner has attempted to frame the issue in this case as whether the Illinois Appellate Court is properly interpreting the definition of the entrapment defense as stated in Sorrels v. U.S., 287 U.S. 435, 53 S.Ct. 210 (1932). Petitioner's attempt to place blame on the Illinois Appellate Court is in error where the Illinois Appellate Court properly applied relevant case law, including Sorrels, to the

record before it and held that defendant was properly found guilty beyond a reasonable doubt of delivery of a controlled substance.

In Sorrels, this Court stated that entrapment exists "when the criminal design originates with the officials of the government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute." 287 U.S. at 442. In Illinois, the defense of entrapment is provided for in section 7-12 of the Criminal Code which states:

> "A person is not guilty of an offense if his conduct is incited or induced by a public officer or employee, or agent of either, for the purpose of obtaining evidence for the prosecution of such person. However, this Section

> is inapplicable if a public officer or employee, or agent of either, merely affords to such person an opportunity or facility for committing an offense in furtherance of a criminal purpose which such person has originated." Ill. Rev. Stat. 1985, ch. 38, par. 7-12.

Once a defendant presents some evidence in support of his contention that there was an entrapment, the State must prove beyond a reasonable doubt that the defendant was not entrapped. People v. Simon. 101 Ill. App. 3d 89, 95-95, 427 N.E.2d 843 (1st Dist. 1981).

The Illinois Appellate Courts have developed a three part test stemming from both the Sorrels case and the relevant Illinois Statute which the courts employ to determine whether an entrapment has occurred.

1) the idea of committing the offense must originate not with the suspect but rather with the enforcement authorities;
2) the enforcement authorities must actively encourage the suspect to commit the offense; and
3) the purpose of the encouragement must be to obtain evidence for the prosecution of the suspect.

Whether the affirmative defense of entrapment is established as a matter of law depends on whether: 1) the government initiated the crime and induced the defendant to commit it; and 2) the defendant has no predisposition to commit the offense. People v. Marshall, 101 Ill. App. 3d 244, 427 N.E.2d 1333 (4th Dist. 1981).

In the instant case, the Appellate Court employed the aforementioned test and properly found that the State was successful in rebutting petitioner's affirmative defense of entrapment. The evidence before the court proved that the idea of dealing cocaine did not originate with the State or its agent, but originated with Jay Perch and petitioner. Officer Pariso was contacted by Jay Perch who told the officer that his cousin, petitioner, could supply anything the officer wanted. Upon meeting Officer Pariso through Perch, petitioner stated that he could obtain as much as a kilogram of cocaine if that was what the officer wanted. Further, petitioner made at least 60 phone calls to various sources attempting to locate cocaine for the deal with Officer Pariso.

Obviously, the idea to deliver the cocaine to Officer Pariso did not originate

with the State or its agent, but with Jay Perch and petitioner. Petitioner's contention that he was induced and threatened by Debbie Gardner, a government informant, to sell the cocaine to Officer Pariso is meritless where Officer Pariso testified that Debbie Gardner had nothing to do with the transaction between petitioner and Officer Pariso. Similarly, petitioner's further contention that he was forced into the situation by Officer Pariso who petitioner claimed contacted him fifty or sixty times by telephone is also without merit where the officer's testimony that he contacted petitioner three or four times prior to the transaction clearly rebutted petitioner's allegation. Credibility determinations are for the trier of fact who in this case apparently belived Officer Pariso. That determination may not be reweighed either by

the Illinois Appellate Court or this Honorable Court. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979). The fact that Officer Pariso merely afforded petitioner the opportunity to commit the crime (as does any undercover officer) does not defeat the fact that the idea originated with Jay Perch and petitioner.

Moreover, the inference of entraptment was further rebutted where petitioner was clearly predisposed to committing the crime. Predisposition, the principle element in the defense of entrapment, focuses upon whether the defendant was an "unwary innocent" or instead, an "unwary criminal" who readily availed himself of the opportunity to perpetrate the crime. Mathews v. United States, 485 U.S. ___, 108 S.Ct. 883, 99 L.Ed. 2d 54 (1988). In determining whether a

defendant was predisposed to commit a crime, the Illinois courts have looked at a variety of factors including whether a defendant: 1) was engaged in drug trafficking prior to the present incident; 2) easily acquiesced in the request to supply drugs; 3) had a ready source to purchase drugs; and 4) had a willingness to make a profit from the illegal act. People v. Myers, 92 Ill. App. 3d 229, 235, 415 N.E.2d 1108 (1st Dist. 1980); People v. Husted, 97 Ill. App. 3d 160, 170-171, 422 N.E.2d 962 (2nd Dist. 1981). The determination of predisposition rests upon the facts of the case and the issue as to whether defendant has been entrapped is a question for the trier of fact. People v. Katsigiannis, 171 Ill. App. 3d 1090, 1097, 526 N.E.2d 508 (2nd Dist. 1988).

On the day of the transaction, petitioner told Officer Pariso to drive to

various locations throughout the city anticipating that at least one of petitioner's "cocaine connections" would successfully supply petitioner with cocaine for Officer Pariso. After petitioner's arrest, he stated that he was only dealing for the money and was going to make $250.00 from the transaction. Further, during the search of petitioner's apartment, various drug paraphernalia was found including scales, a grinder and various solutions for manufacturing cocaine. Moreover, petitioner admitted to using and buying cocaine on previous occasions.

Clearly, petitioner was predisposed to commit the delivery and was obviously not an "unwary innocent" when he told the officer that he could obtain very large quantities of cocaine and that he had not just one, but at least two ready sources of cocaine.

Additionally, petitioner was ready, willing and able to supply Officer Pariso with cocaine and was anticipating a profit of at least a $250.00 from the deal. The fact that various drug paraphernalia were found in petitioner's apartment and his admitted prior use of the drug further supports the Appellate Court's finding that petitioner had engaged in prior drug trafficking and that he was clearly predisposed to committing the herein crime.

The Appellate Court reviewed the testimony presented at trial and affirmed the trial court's decision, finding defendant guilty of delivery of a controlled substance, following which the Illinois Supreme Court declined to review the case. Petitioner now requests this Court to reassess the credibility of the witnesses, and to reweigh the evidence presented and find in favor of

defendant. A review of the evidence is not the purpose to be served by a grant of certiorari. As Justice Holmes stated, "(w)e do not grant a certiorari to review evidence and discuss specific facts." United States v. Johnson, 268 U.S. 220, 227, 45 S.Ct. 496 (1925). Therefore, the State of Illinois respectfully requests that this Honorable Court deny the petition for a writ of certiorari.

## CONCLUSION

The People of the State of Illinois respectfully request that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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